

**APPELLATE TRAINING:
NEW & EMERGING LEGAL ISSUES**

DECEMBER 16, 2016

COMMUNICATING WITH THE TRIAL DIVISION

RICHARD BONER
EMERGENCY SUPERIOR COURT JUDGE

RECOMMENDATIONS FOR EFFECTIVE OPINIONS

1. Effective legal writing is:

- a. Clear - Keep it simple. Avoid legalese, if possible**
- b. Concise - Keep it short and to the point. Don't overdo case citations or factual statements.**
- c. Complete - If the case is being remanded to the trial court, address those issues which may reoccur at a retrial.**
- c. Convincing - Take care in stating your rationale. Tell the reader why you agree with one argument and not the other.**

2. Good writing is rewriting. Edit, Edit, Edit! Don't spare the blue pencil.

3. Good writing is well-organized.

"Tell 'em what you're gonna tell 'em. Then tell 'em. And finally, tell 'em what you've told 'em."

4. If you are sending a case back to the trial court, give specific guidance to the trial court for whatever corrective action you think is needed. Remember that trial judges are not mind readers.

JUDICIAL OPINION WRITING RESOURCES

Judicial Writing Manual: A Primer for Judges (2nd ed. 2013)

<http://www2.fjc.gov/sites/default/files/2014/Judicial-Writing-Manual-2D-FJC-2013.pdf>

Judicial Opinions and Appellate Advocacy in Federal Courts - One Judge's View
Richard A. Posner, 51 *Duquesne Law Review* 3 (2013)

[https://www.appellateacademy.org/about/eisenberg/Posner One Judges Views.pdf](https://www.appellateacademy.org/about/eisenberg/Posner%20One%20Judges%20Views.pdf)

George Rose Smith, *A Primer on Opinion Writing for Four New Judges*, 21 *Arkansas Law Review* 197 (1967)

<http://heinonline.org/HOL/LandingPage?handle=hein.journals/arklr21&div=24&id=&page=>

Jeffrey Rosen, "Strong Opinions", *New Republic*, Jul 28, 2011

<https://newrepublic.com/article/92773/elena-kagan-writings>

